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86TH CONGRESS
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SENATE

REPORT
No. 1534

LT. COL. ALONZO C. TENNEY

JUNE 8, 1960.—Ordered to be printed

Mr. EASTLAND, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 9652]

The Committee on the Judiciary, to which was referred the bill (H.R. 9652) for the relief of Lt. Col. Alonzo C. Tenney, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to authorize and direct the Secretary of the Treasury to pay to Lt. Col. Alonzo C. Tenney, U.S. Air Force, a sum equal to the amount he would have received under the provisions of Public Law 561 of the 84th Congress, had he made timely application for pay and allowance due him by virtue of that act for the period October 4 through November 7, 1950.

STATEMENT

Records of the Department of the Air Force disclose that Lt. Col. Alonzo C. Tenney was appointed a captain in the Air Force Medical Corps in August of 1950 and accepted his appointment on October 4, 1950. He was not serving on active duty when he accepted the appointment, and was ordered to remain at his home address pending the receipt of orders assigning him to his initial duty station. By orders dated October 24, 1950, he was assigned to duty at Randolph Air Force Base, and directed to report on or about November 7, 1950. He was assigned to duty at that base effective November 8, 1950, and received pay and allowances from that date.

Public Law 561 of the 84th Congress, the act of June 4, 1956 (70 Stat. 245), authorized pay and allowances to commissioned officers of the Regular Air Force who were absent from duty by authority of the Secretary concerned for any period after their acceptance of their appointments to the Regular Air Force while awaiting orders assigning them to their initial duty station. As is apparent, these provisions applied directly to Lieutenant Colonel Tenney's situation when he accepted his appointment on October 4, of 1950 but was not directed to report until November 7, 1950. However, the difficulty in this case is that although on or about April 7, 1958, the officer advised authorities at the Lackland Air Force Base that he had not received pay and allowances for the period from October 4 to November 7, 1950, and Headquarters, 3700th Military Training Wing at that base advised the Air Force Accounting and Finance Center of that fact, still it was ultimately ruled that Lieutenant Colonel Tenney was not entitled to payment under the law. This resulted from the fact that a formal claim was not made by the officer within the period specified in the law. Lieutenant Colonel Tenney's inquiry about the back pay was made in April of 1958 about 60 days prior to the expiration of the period for filing claims for the back pay involved. However, through administrative error, the Air Force Accounting and Finance Center delayed its reply in Lieutenant Colonel Tenney's case until July 1, 1958, which was after the time for filing claims. In that reply that center advised the Lackland Air Force Base that if the officer desired to make a claim under Public Law 561, it had to be established that the claim was made prior to June 4, 1958. The Claims Division of the General Accounting Office ultimately ruled that Lieutenant Colonel Tenney's claim of November 20, 1958, was too late, and the letter of April 7, 1958, directing the inquiry to the finance center could not be considered a timely application by the officer. In this connection the following statement from the General Accounting Office report to the committee on the bill discloses that this sequence of events leads that office to interpose no objection to this bill:

While technically the officer had not fully complied with the requirements set out in the 1956 act respecting the filing of his claim, we feel that, under the circumstances shown, since he made inquiry about his claim approximately 60 days before the expiration date specified in the act, and since before the expiration date action was initiated by the Air Force by letter to examine his records, this case has special equities to warrant favorable consideration of H.R. 9652.

We have no objection to the enactment of the proposed bill.

The report furnished the committee by the Air Force recommends that favorable consideration be given the bill, and points out that the delay in furnishing the information in response to the April 7, 1958, letter contributed to the failure to file the claim in time.

In view of the circumstances of this case, the favorable recommendation by the Air Force, and the fact that the Comptroller General interposes no objection to relief, this committee recommends that the bill be considered favorably.

Attached hereto and made a part hereof are the communications from the Department of the Air Force and the Comptroller General of the United States with respect to this legislation.

DEPARTMENT OF THE AIR FORCE,
Washington, D.C., March 25, 1960.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Air Force with respect to H.R. 9652, 86th Congress, a bill for the relief of Lt. Col. Alonzo C. Tenney.

The purpose of the bill is to authorize the Secretary of the Treasury to pay to Lt. Col. Alonzo C. Tenney a sum equal to the amount which he would have received under the provisions of Public Law 561, 84th Congress (70 Stat. 245), if he had made timely application under that act for pay and allowances from October 4 to November 7, 1950. The bill states that Lieutenant Colonel Tenney failed to make timely application for such compensation because the U.S. Air Force did not comply with his request for information from his official record upon which to make a claim, that the requested information was not furnished him for almost 3 months, and that the Air Force did not furnish the information until after expiration of the law.

Lieutenant Colonel Tenney (service No. 21425A) was appointed as a captain in the Medical Corps, U.S. Air Force, on August 18, 1950, with date of rank the same date. Lieutenant Colonel Tenney accepted his appointment on October 4, 1950, and was ordered to remain at his home address pending receipt of subsequent orders announcing his initial duty assignment. On October 24, 1950, Lieutenant Colonel Tenney was assigned to duty at Randolph Air Force Base, Tex., effective November 8, 1950.

Public Law 561, 84th Congress (70 Stat. 245), approved June 4, 1956, authorized pay and allowances to commissioned officers of the Regular Air Force who were absent from duty by authority of the Secretary concerned for any period after their acceptance of appointment to the Regular Air Force while awaiting orders assigning them to their initial duty station. Public Law 561 specifically provides that application for payments must be made "within 2 years after the date of enactment of this act."

The Air Force implemented this law by a teletype dated July 27, 1956, to all major air commands with the suggestion that it be given the widest dissemination possible. Under the provisions of the teletype, officers who were entitled to payments under Public Law 561 were instructed to file claims with the Military Pay Division, Air Force Accounting and Finance Center, 3800 York Street, Denver, Colo.

Records at the Air Force Accounting and Finance Center establish that on April 7, 1958, Headquarters 3700th Military Training Wing, Lackland Air Force Base, advised the Air Force Accounting and Finance Center that Lieutenant Colonel Tenney (then major) stated he had received pay from November 7, 1950, instead of from the date of continuous active duty, October 4, 1950, as indicated in his official statement of service. Lackland Air Force Base also requested that Lieutenant Colonel Tenney's military pay records be checked to ascertain whether the officer had received pay from October 4, 1950. This inquiry did not specify that the officer intended or contemplated making a claim under Public Law 561. On July 1, 1958, the Air

Force Accounting and Finance Center advised Lackland Air Force Base that Lieutenant Colonel Tenney's military pay record showed that his pay started on November 8, 1950. This was a verification of information submitted to Lackland Air Force Base by Lieutenant Colonel Tenney. The Air Force Accounting and Finance Center also advised Lackland Air Force Base that in the event Lieutenant Colonel Tenney desired to make a claim under Public Law 561, it must be established that the claim was made prior to June 4, 1958.

On November 20, 1958, Lieutenant Colonel Tenney filed a claim for payment under Public Law 561. The claim was transmitted by Lackland Air Force Base to the Air Force Accounting and Finance Center on December 8, 1958. Lackland Air Force Base considered the letter of April 7, 1958, referred to above, as an application for payment under Public Law 561. The Air Force Accounting and Finance Center adjudicated the claim and determined that Lieutenant Colonel Tenney was entitled to \$618.23 as pay and allowances for the period October 4–November 7, 1950. Because of the question as to whether the letter of April 7, 1958, from Lackland Air Force Base could be considered an application for payment, it was forwarded to the Claims Division, General Accounting Office, Washington, D.C., as a doubtful claim on February 6, 1959. The Air Force Accounting and Finance Center recommended that payment be made.

On February 24, 1959, the Claims Division, GAO, advised Lieutenant Colonel Tenney that since application for pay under Public Law 561 was not filed by him within the time limit, there was no authority for payment of the claim. The Claims Division also advised Lieutenant Colonel Tenney that "The fact that you were misinformed of your rights, while unfortunate, does not entitle you to pay and allowances as provided in Public Law 561, nor may the letter of April 7, 1958, from the Assistant Adjutant, Lackland Air Force Base, Tex., be accepted as a proper application by you, since a mere inquiry is not considered a timely application within the contemplation of the law."

The reply to the request from Lackland Air Force Base for verification of Lieutenant Colonel Tenney's pay date was delayed through administrative error. This is regretted and appropriate action has been taken to prevent such delays in the future. It appears that the delay in furnishing the information concerning pay date contributed to the untimely filing of claim for payment. To our knowledge, Lieutenant Colonel Tenney would not be placed in a favorable situation as compared to others by enactment of H.R. 9652, since we are not aware of any other claims under Public Law 561 which have been denied because of untimely filing. Therefore, in the interest of equity, the Department of the Air Force recommends favorable consideration be given to H.R. 9652, for the relief of Lieutenant Colonel Tenney.

The Bureau of the Budget has advised that there is no objection to the submission of this report.

Sincerely yours,

LEWIS S. THOMPSON,
*Special Assistant for Manpower,
Personnel, and Reserve Forces.*

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, February 3, 1960.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: Your letter of January 18, 1960, acknowledged January 19, 1960, requests a report of the facts together with our opinion as to the merits of H.R. 9652, for the relief of Lt. Col. Alonzo C. Tenney.

The bill would authorize and direct the Secretary of the Treasury to pay to Lieutenant Colonel Tenney, U.S. Air Force, a sum equal to the amount which he would have received under the provisions of Public Law 561, 84th Congress (70 Stat. 245), approved June 4, 1956, if he had made timely application under such act for pay and allowances from October 4 to November 7, 1950, the officer having failed to make application for such compensation because of the action of the Air Force in holding the officer's request for information from his official records upon which to make such claim for almost 3 months, the reply to such request having been received after the expiration of the period for filing such claim as provided in the act of June 4, 1956.

The above-mentioned act of June 4, 1956 (70 Stat. 245), provided, in pertinent part, that:

"* * * That commissioned officers of the Regular Army or Regular Air Force (except those appointed pursuant to the Act of December 28, 1945 (59 Stat. 663)), as amended, who, subsequent to August 31, 1946, and prior to the date of enactment of this Act, were absent from duty by authority of the Secretary concerned for any period after their acceptance of appointment as a commissioned officer of the Regular Army or Regular Air Force during which period they were awaiting orders assigning them to their initial-duty stations, shall, if application therefor is made within two years after the date of enactment of this Act and to the extent they have not already been paid therefor, be paid pay and allowances for that period. * * *"

Under the provisions of that act the 2-year period specified for filing an application for such pay expired on June 4, 1958.

The records before us show that our Claims Division, by settlement dated February 24, 1959, disallowed an identical claim filed here by the officer. The claim was denied substantially for the reason that a letter written by an assistant adjutant at the officer's duty station—prior to the expiration of the 2-year period and at the officer's request—to another command requesting information from his official records in order to file his claim, is nothing more than an inquiry and may not be accepted as a timely application by the officer within the meaning of the 1956 act.

It appears from the records that by paragraph 20, Special Orders No. 181, Department of the Air Force, Washington, dated September 15, 1950, the officer was appointed a captain in the U.S. Air Force and that such appointment was accepted on October 4, 1950. The officer was not serving on active duty at that time. By paragraph 5, Special Orders No. 209, Department of the Air Force, Washington, dated October 24, 1950, Captain Tenney was assigned to duty at Randolph Air Force Base, Tex., and ordered to report at that station not later than November 7, 1950. It appears that he reported for duty on November 8. Prior to reporting, his home address was shown to be

Terry, Mont.² The officer was not paid pay and allowances for the period October 4, 1950 (the date of acceptance of his appointment as an officer), to November 7, 1950, inclusive (the day preceding the day he reported for active duty).

It also appears from the records that on or about April 7, 1958, the officer informed the authorities at Lackland Air Force Base, Tex., that he had not been paid pay and allowances for the period October 4 to November 7, 1950. On that basis, the Assistant Adjutant, Lackland Air Force Base, Tex., by letter dated April 7, 1958, copy enclosed, to the Air Force Finance Center, Denver, Colo., requested that the officer's records be checked to ascertain whether he had been paid the pay and allowances in question. A reply to that inquiry was not made until July 1, 1958, as shown by the enclosed copy of first endorsement dated July 1, 1958. The reply stated that the officer's records show that he was paid commencing November 8, 1950, and that if the officer desires to make claim it must be established that the claim was made prior to June 4, 1958. Thereafter, by letter dated November 20, 1958, copy enclosed, the officer submitted a claim in writing to the personnel officer, Lackland Air Force Base, Tex., for pay and allowances in question, setting forth the steps previously taken to initiate the claim. Subsequently, the Department of the Air Force submitted the claim to our Office for settlement recommending payment.

It is clear from the language of the above-mentioned act of June 4, 1956, that payment of the pay and allowances in question is authorized "if application therefor is made within 2 years after the date of enactment of this act." Since the 2-year period expired on June 4, 1958, any claims received after that date would have been barred. Generally, the term "application" denotes the filing of a claim over the handwritten signature of the claimant. It has been held, with respect to claims cognizable by our Office under the act of October 9, 1940 (54 Stat. 1061), that a communication from the head of the department or establishment of the Government is not a "claim" in behalf of employees of that department or establishment (25 Comp. Gen. 670, 673). We view the act of June 4, 1956, as requiring an application over the handwritten signature of the claimant and that such application must have been filed with the Department of the Air Force prior to June 5, 1958.

While technically the officer had not fully complied with the requirements set out in the 1956 act respecting the filing of his claim, we feel that, under the circumstances shown, since he made inquiry about his claim approximately 60 days before the expiration date specified in the act, and since before the expiration date action was initiated by the Air Force by letter to examine his records, this case has special equities to warrant favorable consideration of H.R. 9652.

We have no objection to the enactment of the proposed bill.

Sincerely yours,

JOSEPH CAMPBELL,

Comptroller General of the United States: